

Before the  
POSTAL REGULATORY COMMISSION  
Washington, DC 20268-0001

Statutory Review of the System :  
for Regulating Rates and Classes : Docket No. RM2017-3  
for Market-Dominant Products :

ANSWER OF GREETING CARD ASSOCIATION  
AND NATIONAL POSTAL POLICY COUNCIL TO  
PUBLIC REPRESENTATIVE'S MOTION FOR RECONSIDERATION

On January 5, 2018, the Public Representative filed a Motion for Reconsideration of the Commission's finding in Order No. 4257 that the existing system for regulating rates and classes for market-dominant products ("PAEA system") has maintained the short-term financial stability of the Postal Service. The undersigned parties, pursuant to sec. 21(b) of the Rules of Practice, respectfully represent to the Commission that the motion should be denied, for reasons explained below.<sup>1</sup>

I. THE MOTION IS PREMATURE

Considered without regard to the merits of the question it raises, the motion should be denied as premature.

The Public Representative admits (Motion, p. 3) that the Commission's finding on short-term stability "does not, of course, preclude its broader finding that the Postal Service's overall financial stability has not been achieved because of medium-term and long-term financial instability." This is true; but it also entails the conclusion that the allegedly wrong short-term finding is no obstacle to the Commission's conducting the full

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<sup>1</sup> The undersigned Parties generally concur with and support the opposition filed January 10, 2018, by PostCom, the Alliance of Nonprofit Mailers, and MPA.

review mandated by sec. 3622(d)(3). That provision defines the scope of this review. That the Commission, for analytical purposes, divided the financial stability issue into three tiers does not detract from its ability to consider the entire timespan – short, medium, and long terms – in deciding whether the PAEA system needs to be changed.<sup>2</sup>

The Public Representative argues (*ibid.*) that the short-term stability finding is “problematic because it is relied on as a premise for the remedies proposed in Order No. 4258.” He asserts that this is so because the alleged error “will adversely affect timing of the remedies needed” to improve the PAEA system. That is: the relevance of the short-term stability finding is that it may affect the “remedies” the Commission has offered for public comment in a notice of *proposed* rulemaking. If the Commission found, after reviewing these comments (including, presumably, those filed by the Public Representative) that something needed to be done sooner (or later) than earlier contemplated, it would be free to make the change. It is clearly premature to insist now that a preliminary finding, which does not restrict the Commission’s ability to conduct a full-scale review, must be reversed because it would, in the movant’s view “adversely affect” proposed remedies which the Commission could amend, if appropriate, in the rule-making proper.

The Commission would be well justified in denying the Motion on this ground alone. The Public Representative’s substantive arguments, however, are also unpersuasive.

## II. THE ARGUMENTS AGAINST THE COMMISSION’S SHORT-TERM STABILITY FINDING ARE INSUBSTANTIAL

### A. Defining operating expenses

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<sup>2</sup> NPPC has filed a petition for review of Order No. 4257 in the U.S. Court of Appeals for the District of Columbia Circuit. *National Postal Policy Council v. Postal Regulatory Commission*, Case No. 17-1276 (filed Dec. 29, 2017). By submitting this opposition, the NPPC in no way waives its disagreement with the Commission’s analytical approach or its definition of financial stability, or any other issue arising in Order No. 4257.

Notwithstanding the Commission's careful explanation of its short-term stability analysis (Order No. 4257, pp. 159-165), the Public Representative argues that it has "[f]ailed to [j]ustify" reducing operating expenses (as he would define them) in the short-term finding. Motion, pp.4-6. The reductions at issue are interest expense, retiree health benefit pre-funding obligations, and non-cash workers' compensation and supplemental FERS annuity contribution accruals. The Public Representative objects, first, that the resulting expense figure is not the same as that adumbrated in Order No. 3673. We submit that it need not be. The definitions in Order No. 3673 were explicitly labeled as "provisional." Order No. 3673, p. 3. At pp. 10-11 of the same Order, the Commission invited public comment on whether the preliminary definitions and potential metrics were "reasonable," as well as soliciting proposed alternatives from commenters who thought they were not. The structure of this proceeding has thus always allowed for changes in what the Commission set out in the advance notice of proposed rulemaking. That it did make a change is not an error.

The Commission's Order 4257 definition of operating expenses, for short-term stability analysis, is both reasonable and fully supported. It stated (Order No. 4257, p. 160) that operating expenses "are the essential costs of running the entity on a day-to-day basis." The reductions in booked operating costs are explained in fn. 263 on the same page, and are consistent with the Commission's annual financial report practice. The Public Representative admits this, but objects that in its financial reports the Commission "did not do so to analyze short-term financial stability." This is not relevant. The question is whether the short-term analysis here, which is just one part of a tripartite financial investigation, is appropriate for its own particular purpose. The Commission pointed out (Order No. 4257, p. 159) that it was including RHB pre-funding and other statutory obligations in its medium- and long-term stability analyses. That they were not included in the short-term analysis shows merely that the Commission decided, quite reasonably, that they are not short-term factors. In this connection, the confusion into which the Public Representative appears to have fallen is discussed next.

## B. The question of cash reserves

The Public Representative argues that the Commission's reliance on the Postal Service's cash reserves is erroneous. He states (Motion, p. 6) that

. . . The problem with this rationale is that the end-of-year cash reserves relied upon by the Commission are, as the Commission forthrightly acknowledges, due to the Postal Service's limitation of capital investment and nonpayment of the statutory RHBF payment obligations. . . . In other words, the Postal Service's ability to maintain a level of cash sufficient to maintain operations in the short-term is due to its ability to avoid meeting other obligations including statutory obligations in at least the short-term. This rationale sounds more like insolvency than short-term financial stability.

We respectfully suggest that if the short-term stability finding sounds, to the Public Representative, "more like insolvency" it does so only because he ignores the distinction between *short-term* financial stability and financial stability *tout court*. It is worth noting that in Order No. 3673 the Commission stated that "*Long-term* financial stability could be measured by solvency (*i.e.*, total assets / total liabilities)." Order No 3673, p. 7 (*italics added*). The Public Representative's own argument, quoted above, illustrates the confusion; there clearly is no logical error in stating that an entity can hold enough cash for short-term purposes by not meeting obligations that do not have to be met in the short term.

## III. CONCLUSION

The Motion for Reconsideration should be denied as premature, for the reasons explained in section I, above, and because it is substantively mistaken, as explained in section II.

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Respectfully submitted,

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